

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 463 of 1973

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

HEIRS OFRATILAL SAKARLAL

Versus

THE SURAT MUNI.CORPORATION

Appearance:

MR MS RAO for Petitioners

M/S. B.K. & G. for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/04/99

ORAL JUDGEMENT

This appeal is directed against the judgment and order dated 5.5.1973 passed by the learned District Court, Surat in Regular Civil Appeal No. 197/92 confirming the judgment and decree dated 31.8.1972 passed by the learned Civil Judge (J.D.), Surat in Civil Suit No. 512/69.

2. The appellant-plaintiffs were owners of the properties bearing Nondh No. 429 admeasuring 28,435 sq.ft., Nondh No. 430 admeasuring 14,036 sq.ft. and

Nondh No. 432 admeasuring 2,662 sq.ft. of Ward No. 7 in the City of Surat. The final Town Planning Scheme No. 1 in Surat came into force in 1956. Plot Nos. 25 and 32 were allotted to the plaintiffs under the scheme. Respondent-defendant No. 1 Surat Municipal Corporation required some lands for road and for laying a public garden from three plots of the plaintiffs. It was in lieu of this land that plot Nos. 25 and 32 were allotted to the plaintiffs. There was no dispute regarding plot No. 25. However, in so far as plot No. 32 is concerned, the plaintiffs alleged that it was a triangular shape plot and there was a few huts on the said land when it was allotted to the plaintiffs and the hutment dwellers have constructed a temple on the land admeasuring 8'-4" x 10' with permission of the Corporation and Municipality. It is alleged that the defendant-Municipality is required to get that construction pulled down, but the Municipality has taken no steps in that direction. On the contrary, the Municipality has been collecting rent from the hutment dwellers and also allowed new persons to occupy the huts on the suit land. When the plaintiffs were served with the notices dated 27.2.1969 from defendant No.1-Municipality demanding instalments of betterment charges amounting to Rs.14,680/-, the plaintiffs contended that they intend to pay the charges after selling plot No. 32 which is allotted to them after ascertaining the amount of rent collected by the Municipality. The plaintiffs filed the present suit on 28.4.1969 for a permanent injunction to restrain defendant No.1-Municipality (now Surat Municipal Corporation) from enforcing its notices dated 27.2.1969 demanding instalments of betterment charges till defendant No. 1 handed over vacant possession of plot No. 32 alongwith the arrears of rent collected by it to the plaintiffs. The plaintiffs also claimed Rs.200/- as damages for damage to the fencing.

3. Defendant No. 1 resisted the suit by filing its written statement, inter alia, contending that the Civil Court has no jurisdiction to entertain the suit which is barred by the provisions of Bombay Town Planning Act, 1954. The Town Planning Scheme came into force from 1.9.1964 and final plot Nos. 25 and 32 have been allotted to the plaintiffs. Although there are some tenants in the huts put up on final plot No. 32, defendant No. 1 is not liable to evict the tenants and give vacant possession of the plot to the plaintiffs. It is also denied that the temple was put up on the said plot on account of any negligence of defendant No. 1. Defendant No. 1 also contended that it was for the

plaintiffs to take steps for not allowing construction to take place on plot No. 32 and that since construction was put up on the said land after the scheme came into force, the plaintiffs are not entitled to get any relief from the defendants except that defendant No. 1 has no objection to hand over the amount of rent collected by it from the tenants, but on that ground the plaintiffs have no right to withhold handing over possession of some part of the lands required for garden and public road. The plaintiffs have continued to cultivate the land which they are required to surrender to defendant No. 1 under the Town Planning Scheme and the plaintiffs are, therefore, liable to account for the produce derived by them from cultivation of the said land. Defendant No. 1 further contended that the plaintiffs are bound to pay the instalments of betterment charges under the Town Planning Scheme and that the plaintiffs cannot refuse to pay the said amount on any ground. Various contentions about non-compliance with the provisions of the BMC Act regarding notice and bar of limitation were also pleaded by the Corporation.

4. After considering the pleadings and evidence on record, the trial Court dismissed the suit for perpetual injunction but the only relief granted to the plaintiffs was that they were entitled to claim adjustment of the rent collected by the defendant-Corporation towards the defendant's claim for betterment charges.

5. Aggrieved by the aforesaid judgment and decree of the trial Court, the appellants herein i.e. original plaintiffs preferred Regular Civil Appeal before the District Court. The District Court dismissed the appeal with observations that the right of the Municipality to evict the plaintiffs from the land which has vested in the Municipality under the Town Planning Scheme is absolute and unconditional and that the Municipality cannot be restrained from enforcing the impugned notices on the ground or on condition that the defendant-Municipality must first remove unauthorized construction on the plots allotted to the plaintiffs. The District Court further observed that it was the duty of the Corporation to remove all unauthorized occupants and their structures, but that cannot be imposed as a condition precedent as the remedy of the plaintiffs would lie in moving the Municipality under Section 55 of the Bombay Town Planning Act, 1955.

Aggrieved by the aforesaid judgements and decrees passed by the lower Courts, the original plaintiffs have filed the present Second Appeal which is pending for

hearing since 1973.

6. At the hearing of this appeal, the learned counsel for the appellant stated that on 15.10.1991 the appellants have already paid a sum of Rs.21,237/- to defendant No. 1 being the principal amount of betterment charges and in support of the said statement, the learned counsel has produced a copy of the letter from the plaintiffs to the Municipal Commissioner with the endorsement dated 15.10.1991.

7. In the decision dated 27.11.1990 rendered by a Division Bench of this Court in Special Civil Application No. 4200/97 a similar contention was raised by the petitioners therein i.e. the respondent Corporation should be required to first hand over possession of the plot allotted to the petitioners under the Town Planning Scheme before the petitioners can be required to hand over possession to the Corporation which has vested in the Corporation under the Town Planning Scheme. This Court negatived that contention by observing that implementation of the scheme cannot be made dependent upon the Corporation handing over that portion of the plot to the petitioner. However, this Court did direct the respondent-Corporation to take immediate steps to put the petitioners in possession of the land which was allotted to them under the Town Planning Scheme.

8. In the case of Bombay Municipality vs. Advance Builders, AIR 1972 SC 793, the Apex Court considered the following question :-

"6. The point of substance in this appeal is whether the Municipal Corporation, as the local authority under the Act, owed a duty to remove the unauthorized structures, even though those structures were on private final plots of the respondents. That the respondents could, by having recourse of law, eject the slum-dwellers and remove the huts and structures would not be a relevant consideration if, under the Act and the Scheme, the duty was imposed on the local authority."

After examining the scheme of the Bombay Town Planning Act, 1955, the Apex Court arrived at the following conclusion :-

"12. It is clear, therefore, on a consideration of the provisions of the Bombay Town Planning Act, 1954 and especially the

sections of that Act referred to above, that the Corporation is exclusively entrusted with the duty of framing and implementation of the Planning Scheme and, to that end, has been invested with almost plenary powers. Since development and planning is primarily for the benefit of the public, the Corporation is under an obligation to perform its duty in accordance with the provisions of the Act."

9. It is, therefore, clear that while the Courts below were right in refusing to grant the prayer for perpetual injunction to restrain defendant No. 1 from taking over possession of the land vested in defendant No. 1 under the Town Planning Scheme, but as regards the observation made by the Courts below that no direction could be given to the Municipality to put the plaintiffs in possession of the land allotted to them, the Civil Court could have certainly moulded the relief appropriately, the Civil Court could have given appropriate direction to defendant No. 1-Municipality to take immediate steps to put the plaintiffs in possession of the land which has been allotted to them under the Town Planning Scheme i.e. more particularly plot No. 32 which is the subject matter of the present suit.

10. In view of the above discussion, the following directions are required to be issued to the respondent-Corporation :-

(i) that the respondent-Corporation shall, within six months from the date of receipt of a certified copy of this judgment, remove all unauthorized structures standing or lying on final plot No. 32 in the Surat Town Planning Scheme No. 1.

(ii) In order to see that this exercise is completed within the aforesaid time limit, the respondent-Corporation shall initiate the process for removing the unauthorized structures on the aforesaid final plot within one month from the date of receipt of a certified copy of this judgment and, in any case, the respondent-Corporation shall put the appellant-plaintiffs into possession of final plot No. 32 by expiry of the period of six months from the date of receipt of a certified copy of this judgment.

11. The learned counsel for the appellants states that the appellants do not insist on demolition of the

temple which is already constructed on final plot No. 32 and that the appellants are prepared to take over final plot No. 32 alongwith the temple already constructed thereon, but the appellants want clear and vacant possession of final plot No. 32 without any other structure on the land.

12. Accordingly, this Second Appeal is partly allowed. Respondent No. 1 herein is directed to take immediate steps to put the plaintiffs in possession of final plot No. 32 in final Town Planning Scheme No. 1, Surat. However, the prayer for perpetual injunction demanded by the plaintiffs in the suit cannot be granted and the orders passed by the Courts below refusing to grant such perpetual injunction are confirmed and to that extent the Second Appeal fails.

It is accordingly held that while the appellant-plaintiffs are not entitled to get the perpetual injunction to restrain defendant No. 1 from taking over possession of the land which is vested in defendant No. 1 for the purpose of laying/widening road and the public garden which land is vested in the Municipal Corporation under the Town Planning Scheme, it is directed that defendant No. 1 shall take immediate steps to remove unauthorized structures on the land and to put the plaintiffs in possession of final plot No. 32 within six months from the date of receipt of a certified copy of this judgment and for that purpose to initiate the process within one month from the date of receipt of a certified copy of this judgment.

The decree passed by the trial Court that the plaintiffs are entitled to claim adjustment for the rent collected by the defendant-Corporation towards the defendant's claim for betterment charges is confirmed.

13. The appeal is accordingly disposed of in the aforesaid terms.

Sd/-

April 22, 1999 (M.S. Shah, J.)

sundar/-